

**2013 AFSCME MEF/CEO NEGOTIATIONS
UNION PACKAGE PROPOSAL C***

PERIOD OF MEMORANDUM OF AGREEMENT

One (1) Year Term

WAGES – ARTICLE 12

MEF:

Addition of 2.5% salary step at the top of the salary range for each classification.
One time non-pensionable adjustment of 2% of the annual salary will be paid as a lump sum payment for each current employee.

CEO:

One time non-pensionable adjustment of 2% of the annual salary will be paid to employees who are represented by CEO.
Effective June 23, 2013, the top step for employees represented by CEO will be increased by approximately 2.5% by adding an additional step (hereinafter referred to as “Step 10”) to each classification represented by CEO. All employees who have worked 2080 hours at the top step range (hereinafter referred to as “Step 9”) on June 22, 2013, will receive a salary step increase of approximately 2.5% effective June 23, 2013. All employees who worked less than 2080 hours in Step 9 will receive an automatic step increase upon working a total of 2080 hours in Step 9. All employees who are not at top step on June 23, 2013, will continue to receive automatic salary step increases as scheduled until they reach the top of the pay range (inclusive of the new step).

WORKING IN A HIGHER CLASSIFICATION

See Attached (AFSCME Counter-Proposal)

CALL BACK AND STANDBY PAY

As proposed by City in City Package Proposal C, with the addition of the following language:

MEF:

12.8.2 For purposes of this Article, any paid time off granted to an employee in accordance with 12.8.1, shall be deemed hours worked.

CEO:

7.11.2 For purposes of this Article, any paid time off granted to an employee in accordance with 7.11.1, shall be deemed hours worked.

OVERTIME AND COMPENSATORY TIME

See Attached (AFSCME Counter-Proposal)

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SICK LEAVE PAYOUT

See Attached (AFSCME Counter-Proposal)

GRIEVANCE PROCEDURE – TIMELINES

As proposed by City in City Package Proposal C

CONTRACTING OUT

As proposed by City in City Package Proposal C

DISABILITY LEAVE SUPPLEMENT

As proposed on March 28, 2013 (City Proposal #12)

TENTATIVE AGREEMENTS

Layoff, Tentative Agreement Reached on June 6, 2013
Protective Footwear, Tentative Agreement Reached on January 25, 2013
Uniform Allowance, Tentative Agreement Reached on January 25, 2013
Holidays, Tentative Agreement Reached on May 15, 2013
Grievance Procedure - Arbitrator List Cost-Sharing, Tentative Agreement Reached on May 15, 2013
Health and Dental-In-Lieu, Tentative Agreement Reached on May 15, 2013
Uniform Allowance – Dispatcher Trainees, Tentative Agreement Reached on May 15, 2013
Citywide Labor Management Committee, Tentative Agreement Reached on May 15, 2013
Holiday-In-Lieu – Public Safety Dispatcher Class Series, Tentative Agreement Reached on May 15, 2013
Training Pay, Tentative Agreement Reached on May 23, 2013
Safety, Tentative Agreement Reached on May 23, 2013

SIDELETTER AGREEMENTS

Subsidy for Public Transit, Tentative Agreement Reached on May 23, 2013
Sr. Airport Operations Specialists Pilot Program, Tentative Agreement Reached on June 6, 2013

REOPENERS

- Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retirement benefits upon request of either party in the event that the pension modification ballot measure, also known as Measure B, in part or in whole, is declared



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invalid or otherwise modified or changed by any court of competent jurisdiction or any other administrative process, or by any applicable State or Federal law or regulation.

- Notwithstanding any other proviso of this Agreement, the parties agree to meet and confer over the retiree healthcare benefits and funding upon request of either part, but no earlier than January 1, 2014. This may include but is not limited to alternatives to reduce the unfunded liability and options for current employees that comply with IRS regulations.
- Negotiations between the City and Employee Organization shall commence within 14 days upon notice of either party, but no earlier than January 1, 2014. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

** This proposal is submitted in an attempt to reach a settlement. In the event the proposal is not accepted, AFSCME MEF/CEO reserves the right to modify, amend, and/or add proposals.*



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AFSCME COUNTER PROPOSAL – HIGHER CLASS PAY

Proposed MEF Language:

- 12.7 Working in a Higher Classification. Upon specific assignment by the Department Director, or designee, with prior written approval, a full-time or part-time benefited employee may be ~~required~~ assigned to perform the duties of a full-time or benefited part-time position in a higher classification. Such assignments may be made to existing authorized positions which are not actively occupied due to the temporary absence of the regularly appointed employee or vacant positions. Assignments to a higher classification due to a vacancy shall not exceed six (6) calendar months. Extension of an employees' specific higher class assignment beyond the aforementioned six (6) calendar month limitation may only occur through written mutual agreement between the City and the Union.
- 12.7.1 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least ~~one (1) salary rate (step)~~ five percent (5%) higher in the salary range schedule than the rate received by the employee in the employee's present class. Notwithstanding any other provision of this section, in no event shall an employee receive any amount in excess of the top of the salary range of the higher classification. The employee shall not receive any compensation, however, unless the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive hours within one (1) day. In the event the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive work hours within one (1) day, the employee shall be compensated at the appropriate rate for all eligible hours worked in the higher class within the pay period.
- 12.7.2 Employees assigned to duties of a higher classification for six (6) months to a vacant higher class position, shall receive the higher class pay for the entire duration of the higher class assignment including paid time off for holidays and city authorized closures where permanent employees in the higher class position are also paid. Exceptions to higher class pay for time off, are approved vacations, sick leave, comp. time, and personal leave.

Proposed CEO Language:

- 7.3 Working in a Higher Classification
- 7.3.1 Upon specific assignment by the Department Director, or his/her designated representative, with prior written approval, a full-time or part-time benefited employee may be ~~required~~ assigned to perform the duties of a full-time ~~or benefited~~ part-time position in a higher classification. Such assignments may be made to existing authorized positions that are not actively occupied due to the temporary absence of the regularly appointed employee or vacant positions. Assignments to a higher classification due to a vacancy shall not exceed six (6) calendar months regardless of the number of actual hours worked in the higher class. Once an employee reaches the six (6) calendar month maximum in a specific higher



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class assignment due to a vacancy, the employee shall not be eligible to serve in the same higher class assignment for at least six (6) months and shall return to his/her regular assignment.

7.3.1.1 By mutual written agreement between the City and the ~~Employee Organization~~ Union, an employee assigned to work in a higher classification due to a vacancy may be extended in his/her specific assignment past the aforementioned six (6) calendar month limitation.

7.3.2 Employees specifically assigned to duties of a higher classification shall be compensated at the rate in the salary range of the higher class which is at least one (1) salary rate (step) five percent (5%) higher in the salary range schedule than the rate received by the employee in the employee's present class. Notwithstanding any other provision of this section, in no event shall an employee receive any amount in excess of the top of the salary range of the higher classification. The employee shall ~~not~~ receive higher class pay if ~~any compensation, however, unless~~ the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive hours within one (1) day. In the event the assignment is for a minimum of twenty-four (24) cumulative work hours within one (1) pay period and a minimum of four (4) consecutive work hours within one (1) day, the employee shall be compensated at the appropriate rate for all eligible hours worked in the higher class within the pay period.

7.3.3 Employees assigned to duties of a higher classification due to the vacancy of the higher class position, shall receive the higher class pay for the entire duration of the higher class assignment including paid time off for holidays and city authorized closures where permanent employees in the higher class position are also paid. Exceptions to higher class pay for time off, are approved vacations, sick leave, comp. time, and personal leave, unless it is determined that the employee is required to still be available in the higher class capacity during such time off.

7.3.4 The Union shall be notified quarterly of all employees working in higher class positions and the date the employee started the higher class assignment. The Union shall also be notified of all employees from other bargaining units performing work designated as work covered by the bargaining unit covered by this Agreement.

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AFSCME PROPOSAL – OVERTIME AND COMPENSATORY TIME

Proposed MEF language:

ARTICLE 7 HOURS OF WORK AND OVERTIME

7.12 Overtime and Compensatory Time

7.12.1.1 Mandatory Overtime assignments shall be compensated at the rate of 1-1/2 times the employee's hourly rate.

7.12.1.2 If at any time an employee is required to work more than twelve (12) consecutive hours in one shift, whether voluntary or mandatory, the employee shall be compensated at the rate of two (2) times the employee's hourly rate for hours worked beyond twelve (12) hours.

Proposed CEO language:

ARTICLE 6 HOURS OF WORK AND OVERTIME

6.7.2 Mandatory Overtime assignments shall be compensated at the rate of 1-1/2 times of the employee's hourly rate.

6.7.3 If at any time an employee is required to work more than twelve (12) consecutive hours in one shift, whether voluntary or mandatory, the employee shall be compensated at the rate of two (2) times the employee's hourly rate for hours worked beyond twelve (12) hours.

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AFSCME COUNTER PROPOSAL – SICK LEAVE PAYOUT

Proposed MEF language:

10.3.6 Any employee hired on or after September 30, 2012, shall not be eligible for sick leave payout.

10.3.7 Upon a release of claims set forth in the AFSCME complaint, retroactive payments to eligible employees in the Federated City Retirement System, who retired on or after January 1, 2012, and before the date that this proposal is ratified and approved by the City Council, who were eligible for a sick leave payout at the time of their retirement under the requirements contained herein and did not receive the payout because the payouts were eliminated prior to their retirement. Retirees will be eligible for a payout of the amount of unused sick leave hours accrued as of December 31, 2011, or the date of their retirement, whichever is less. Payouts will be based on the provisions contained in Sections 10.3.9 and 10.3.10 below. This will resolve any claims related to sick leave payout upon retirement.

10.3.7.1 Unfair Practice Charge No. SF-CE-945-M: The parties agree that the foregoing resolves the issues underlying unfair practice charge no. SF-CE-945-M filed by the Union with the Public Employment Relations Board on or about March 15, 2012; therefore, the Union agrees to withdraw the charge no later than fifteen (15) calendar days after the execution of this agreement.

10.3.7.2 Case No. 1-12-CV-237150: *[Pending language that the Union will withdraw from Case No. 1-12-CV-237-150]*

10.3.8 For employees hired on or before September 29, 2012, a sick leave payout shall be made to full-time and part-time benefited employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:

10.3.8.1 Federated ~~City~~ Retirement ~~System~~ Plan. The employee is: a) a member of the Federated ~~City~~ Retirement ~~System~~ Plan; and, b) retired under the provisions cited in the plan; and, c) credited with at least fifteen (15) years of service in this retirement plan, or credited with at least ten (10) years of service prior to a disability retirement.

10.3.8.2 ~~Terminated Separated~~ Employee with Vesting Rights. The employee has: a) ~~terminated separated from~~ service with the City ~~in good standing and has not been terminated for cause as defined by San José Municipal Code Section 3.04.1370~~; and, b) retained vesting rights in a retirement system according to provisions in the San José Municipal Code; and, c) following such ~~termination separation~~, qualifies for retirement and retires under the provisions cited in the

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code; and, d) has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.

10.3.8.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan.

10.3.8.4 Death of ~~Terminated~~ ~~Separated~~ Employee. The estate of any full-time or eligible part-time employee who: a) ~~had terminated~~ ~~has separated from~~ service with the City ~~in good standing, and has not been terminated for cause as defined by San José Municipal Code Section 3.04.1370~~ but had retained vesting rights in a retirement system according to provisions in the San José Municipal Code; and, b) dies (on or after July 10, 1977) prior to becoming eligible for retirement allowances as cited under provisions of the San José Municipal Code; and, c) has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.

10.3.9 Effective June 23, 2013, for purposes of calculating a sick leave payout, an employee's sick leave balance and hourly rates shall be frozen. This means that an employee will receive no more for a sick leave payout, after having met the requirements set forth above, than he or she would have been entitled to on June 23, 2013. Sick leave usage after June 23, 2013, will come first from the sick leave accrued after June 23, 2013. An employee will continue to accrue sick leave after June 23, 2013, but it may not be used for sick leave payout purposes.

For example, if an employee's hourly rate is \$20 and his or her sick leave balance is 250 hours on June 23, 2013, then if he or she meets the eligibility requirements contained herein, the payout of a sick leave balance at the time of retirement will be based on the formula below, and shall be based on no more than 250 hours and an hourly rate of no more than \$20. This will occur even if the employee has subsequently earned more than 250 hours in sick leave or received a pay increase to an hourly rate higher than \$20. In this example, if the employee uses 200 hours of sick leave after June 23, 2013, thereby reducing his or her sick leave payout balance to 50 hours, the employee will only be entitled to sick leave payout of 50 hours at \$20 per hour, regardless of any sick leave accrued after June 23, 2013.

~~10.3.6.5~~ 10.3.10 Payout shall be determined as follows.

10.3.10.1 If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or Estate shall be paid the equivalent of a specified percent of their hourly rate of pay ~~at the time of retirement, termination or death, whichever comes first~~ as of September 30, 2012 ~~at the time of retirement, termination or death, whichever comes first~~ multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death as follows:



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10.3.10.2 Less than 400 hours: Hours accumulated × 50% of final hourly rate
or 400 - 799 hours: Hours accumulated × 60% of final hourly rate
or 800 - 1200 hours: Hours accumulated × 75% of final hourly rate

10.3.11 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

Proposed CEO language:

18.2 Any employee hired on or after September 30, 2012, shall not be eligible for sick leave payout.

18.3 Upon a release of claims set forth in the AFSCME complaint, retroactive payments, including interest shall be made to eligible employees in the Federated City Retirement System, who retired on or after January 1, 2012, and before the date that this proposal is ratified and approved by the City Council, who were eligible for a sick leave payout at the time of their retirement under the requirements contained herein and did not receive the payout because the payouts were eliminated prior to their retirement. Retirees will be eligible for a payout of the amount of unused sick leave hours accrued as of December 31, 2011, or the date of their retirement, whichever is less. Payouts will be based on the provisions contained in Sections 10.3.9 and 10.3.10 below. This will resolve any claims related to sick leave payout upon retirement.

18.3.1 Unfair Practice Charge No. SF-CE-945-M: The parties agree that the foregoing resolves the issues underlying unfair practice charge no. SF-CE-945-M filed by the Union with the Public Employment Relations Board on or about March 15, 2012; therefore, the Union agrees to withdraw the charge no later than fifteen (15) calendar days after the execution of this agreement.

18.3.1 Case No. 1-12-CV-237150: [Pending language that the Union will withdraw from Case No. 1-12-CV-237-150]

18.4 For employees hired on or before September 29, 2012, a sick leave payout shall be made to full-time and part-time benefited employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:

18.4.1 Federated ~~City~~ Retirement ~~System~~ Plan. The employee is: a) a member of the Federated ~~City~~ Retirement ~~System~~ Plan; and, b) retired under the provisions cited in the plan; and, c) credited with at least fifteen (15) years of service in

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this retirement plan, or credited with at least ten (10) years of service prior to a disability retirement.

18.4.2 ~~Terminated~~ Separated Employee with Vesting Rights. The employee has: a) ~~terminated separated from~~ service with the City ~~in good standing and has not been terminated for cause as defined by San José Municipal Code Section 3.04.1370; and, b)~~ retained vesting rights in a retirement system according to provisions in the San José Municipal Code; and, c) following such ~~termination separation~~, qualifies for retirement and retires under the provisions cited in the code; and, d) has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.

18.4.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan.

18.4.4 Death of ~~Terminated~~ Separated Employee. The estate of any full-time or eligible part-time employee who: a) ~~had terminated~~ has separated from service with the City ~~in good standing, and has not been terminated for cause as defined by San José Municipal Code Section 3.04.1370~~ but had retained vesting rights in a retirement system according to provisions in the San José Municipal Code; and, b) dies (on or after July 10, 1977) prior to becoming eligible for retirement allowances as cited under provisions of the San José Municipal Code; and, c) has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.

18.5 Effective June 23, 2013, for purposes of calculating a sick leave payout, an employee's sick leave balance and hourly rates shall be frozen. This means that an employee will receive no more for a sick leave payout, after having met the requirements set forth above, than he or she would have been entitled to on June 23, 2013. Sick leave usage after June 23, 2013, will come first from the sick leave accrued after June 23, 2013. An employee will continue to accrue sick leave after June 23, 2013, but it may not be used for sick leave payout purposes.

For example, if an employee's hourly rate is \$20 and his or her sick leave balance is 250 hours on June 23, 2013, then if he or she meets the eligibility requirements contained herein, the payout of a sick leave balance at the time of retirement will be based on the formula below, and shall be based on no more than 250 hours and an hourly rate of no more than \$20. This will occur even if the employee has subsequently earned more than 250 hours in sick leave or received a pay increase to an hourly rate higher than \$20. In this example, if the employee uses 200 hours of sick leave after June 23, 2013, thereby reducing his or her sick leave payout balance to 50 hours, the employee will only be entitled to sick leave payout of 50 hours at \$20 per hour, regardless of any sick leave accrued after June 23, 2013.

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18.6 Payout shall be determined as follows.

18.6.1 If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or Estate shall be paid the equivalent of a specified percent of their hourly rate of pay ~~at the time of retirement, termination or death, whichever comes first~~ as of September 30, 2012 at the time of retirement, termination or death, whichever comes first multiplied by the total number of accumulated and unused hours of sick leave as of the date of retirement or death as follows:

18.6.2 Less than 400 hours: Hours accumulated \times 50% of final hourly rate
or 400 - 799 hours: Hours accumulated \times 60% of final hourly rate
or 800 - 1200 hours: Hours accumulated \times 75% of final hourly rate

18.7 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.